

1982 WL 189193 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 2, 1982

***1 Re: Opinion Request**

Wendell O. Brown, Esquire
City Attorney
Town of Kingstree
Post Office Box 126
Kingstree, South Carolina 29556

Dear Mr. Brown:

You have requested an opinion regarding the provisions of Section 28-9-10, *et seq.*, South Carolina Code of Laws (1976) relating to eminent domain procedures for municipalities. Specifically, you have asked whether the Board of Freeholders provided for by Section 28-9-20 serves without compensation. You have also asked, if the answer to your first question is negative, whether or not the municipality is responsible for compensating the freeholders chosen by the landowner.

It is without question that no public funds may be expended without proper authorization from the responsible legislative body. [Article 10, Section 8, Constitution of the State of South Carolina](#). Therefore, unless payment of the freeholders is provided for by the eminent domain statute or by some other provision of law, such payment would be unconstitutional.

Generally speaking, provisions for compensation of Board members in eminent domain cases are governed by the enabling statutes themselves. 29(a) C.J.S., Eminent Domain, Section 305. For example, Section 57-5-420 provides for the compensation of members of condemnation boards in State Highway System cases. There is no such provision in Title 28. It naturally follows that any compensation for the Boards of Freeholders created by Title 28 would be improper unless authorized by some other provision of law. A careful review of state and local statutes indicates that no such provision exists.

Based upon the above, it is the opinion of this office that the Boards of Freeholders created by Title 28 serve without compensation. Because the answer to your first question renders your second question moot, we feel that no further discussion is necessary.

I trust that this has sufficiently answered your question. If not, please feel free to call at your convenience.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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